STATE OF MICHIGAN

COURT OF APPEALS

SCOTT WILLIAM PERREAULT,

Plaintiff-Appellant,

v

DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellee.

UNPUBLISHED
March 30, 1999

No. 206113
Court of Claims
LC No. 96-016214 CM

Before: Markman, P.J., and Hoekstra and Zahra, JJ.

PER CURIAM.

In this negligence action, plaintiff appeals as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7) and (10). The trial court determined that plaintiff failed to establish an exception to governmental immunity based on the highway exception, MCL 691.1402(1); MSA 3.996(102)(1), and that defendant was therefore entitled to immunity. We affirm.

On August 11, 1995, plaintiff and his friends arrived at the Ambrose Lake State Forest Campground in Ogemaw County around 1:30 a.m. from Detroit. Plaintiff had been to the campground several times in the past with his friends to go off-road riding and knew that he had to pay a fee to use the campsite, but did not do so on this occasion. Prior to arriving at the campground, plaintiff and his friends had eaten pizza and purchased a case of beer; plaintiff indicated that he had three or four beers before they arrived at the campground. At approximately 2:30 a.m., plaintiff started his off-road vehicle (ORV), with the "intention to warm up the vehicle and check out the path and to come back and gear up and then head out." Plaintiff was not wearing any safety equipment, including a helmet. Plaintiff checked out the path, and then turned around and drove his ORV westbound on Houghton Center Road/Ambrose Lake Campground Road back to his campsite. Plaintiff stated that he was traveling on the left side of the road when he suddenly struck something. The impact with the object caused the ORV to become airborne, and vaulted plaintiff's body forward into a tree. From his point of contact with the tree, plaintiff was thrown to the center of the road and severely injured.

The object plaintiff struck was a cedar post. Such cedar posts are used throughout the campground, and at other campgrounds around the state, to prevent people from driving through certain

areas of the park. The posts stand approximately eighteen inches high, are approximately six to twelve inches in diameter, and are placed approximately two feet apart.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Spiek v Dep't of Transporation,* 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing),* 206 Mich App 83, 85; 520 NW2d 633 (1994). In a motion pursuant to MCR 2.116(C)(7) or (10), the court may consider all affidavits, pleading, and other documentary evidence, construing them in the light most favorable to the non-moving party. *Stehlik, supra; McFadden v Imus*, 192 Mich App 629, 632; 481 NW2d 812 (1992). Statutory interpretation is a question of law that this Court also reviews de novo. *People v Denio,* 454 Mich 691, 698; 564 NW2d 13 (1997).

One of the few exceptions to governmental immunity is the highway defect exception under MCL 691.1402; MSA 3.996(102). The statute sets forth defendant's duty:

> Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel . . . . The duty of the state and county road commissions to repair and maintain highways, and the liability for that duty, *extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, crosswalks or any other installation outside of the improved portion of the highway designed for vehicular travel*. [MCL 691.1402; MSA 3.996(102) (emphasis added).]

For purposes of governmental immunity, highway is defined as "every public highway, road, and street which is open for public travel and shall include bridges, sidewalks, crosswalks, and culverts on any highway." MCL 691.1401(e); MSA 3.996(102)(e). Exceptions to governmental immunity are narrowly interpreted. *Suttles v Dep't of Transportation*, 457 Mich 635, 645; 578 NW2d 295 (1998). Therefore, any exception, including the highway exception, must fall directly within the narrow confines of the statutory language. *Schuerman v Dep't of Transportation*, 434 Mich 619; 456 NW2d 66 (1990); *Taylor v Lenawee Co Bd of Rd Comm'rs*, 216 Mich App 435; 549 NW2d 80 (1996). Terms in the highway exception statute should be construed according to their plain meaning, as is consistent with traditional rules of statutory construction. *Schuerman, supra* at 628.

Here, there is no dispute regarding defendant's status as a governmental agency generally entitled to immunity under MCL 691.1407; MSA 3.996(107). Further, there is no dispute that defendant had jurisdiction over the road in question, and no dispute that Ambrose Lake Campground Road qualifies as a "highway" for purposes of highway exception. Accordingly, the only issues are whether the cedar posts fall within the "improved portion" of the Road or, alternatively, even if they fall outside of the "improved portion," whether they constitute a special 'point of hazard' pursuant to *Pick v Szymczak*, 451 Mich 607, 619; 548 NW2d 603 (1996) for which there is a duty to warn.

Plaintiff first argues that he submitted sufficient evidence to create an issue of fact regarding whether the posts in the campground, including the post he struck, which are separated from the graveled portion of the road by a grassy area of varying widths, were within the "improved portion" of the road. He submitted deposition testimony and an affidavit essentially indicating that the posts were designed to keep vehicular traffic out of the natural areas while allowing foot traffic in the same areas. There was also some indication that the posts provide a visual indication of the edges of the graveled road. We conclude, however, that a straight-forward reading of the statute and application of its terms to the facts at hand support a finding that the post that plaintiff struck was not within the improved portion of the highway. The grassy area separating the posts and the graveled road has never been improved or altered from its natural state, unlike the road itself, which has been improved with sand and gravel or otherwise changed to promote vehicular travel. In fact, there was evidence specifically indicating that the grassy area was not designed for vehicular travel. Accordingly, the grassy area cannot be construed as being within the improved portion of the highway. Plaintiff's claim that the grassy area is analogous to an unpaved shoulder, and is thus within the improved portion of the highway under *Roux v Dep't of Transportation*, 169 Mich App 582; 426 NW2d 714 (1988), is without merit. A shoulder has been considered part of the improved portion of the highway because it is designed for vehicular travel, although in a limited sense. *Gregg v State Hwy Dep'ts*, 435 Mich 307, 314-17; 458 NW2d 619 (1990). The area in question here was not designed for vehicular travel, nor is there the same need for a "shoulder" on a park road as on a more traditional highway. Although vehicles may be physically capable of driving on the grassy area, it was clearly not designed for this purpose.[1] We conclude that the natural grassy area is not an improved portion of the highway. Consequently, the cedar post that plaintiff struck constitutes an installation outside the improved portion of the highway.

Plaintiff also argues that the post constituted a special 'point of hazard' for which defendant had a duty to warn under *Pick, supra* at 607, because it was not readily visible at night and it was not a 'breakaway' post. In *Pick*, the Court held that liability may extend to conditions not physically within an improved portion of the roadbed if they constituted a point of hazard that jeopardized reasonably safe travel. Thus, for example, defendant's duty includes the provision of adequate traffic signs or devices at known points of hazard. *Id.* at 618-19. The Court in *Pick* defined a point of hazard as

> any condition that directly affects vehicular travel on the improved portion of the roadway so that such travel is not reasonably safe . . . . [T]he condition must be one that uniquely affects vehicular travel on the improved portion of the roadway, as opposed to a condition that generally affects the roadway and its surrounding environment. We reemphasize, however, that such conditions need not be physically part of the roadbed itself. [*Pick, supra* at 623 (footnotes omitted).]

We conclude that the posts in question here do not uniquely affect travel on the improved portion of the road, but rather constitute "a condition that generally affects the roadway and its surrounding environment." *Id.* at 623. The posts essentially provide those persons utilizing the campground with some visual indication of where they are permitted to travel, and thus are a condition that affect the road only generally. For example, in *McKeen v Tisch (On Remand)*, 223 Mich App 721; 567 NW2d 487 (1997), this Court concluded that a large tree branch that had been hanging over a road for over a

month, which fell and killed the plaintiff as she drove under it, was a point of hazard under *Pick*. Similarly, in *Iovino v Michigan*, 228 Mich App 125; 577 NW2d 193 (1998), the Court held that a point of hazard existed where a blinking light at an intersection which involved a railroad crossing allowed motorists to enter the intersection despite the approach of an oncoming train. In these cases, the conditions uniquely affected travel on the improved portion of the road and were highly hazardous. However, in our judgment, the post simply does not present a comparable hazard to persons using the improved portion of the park road.

The trial court did not err in granting summary disposition because the post in question was not within the improved portion of the highway designed for vehicular travel as required by the highway exception, and because plaintiff has failed to establish that the posts were a point of hazard.

Affirmed.

/s/ Stephen J. Markman
/s/ Joel P. Hoekstra
/s/ Brian K. Zahra

[1] In fact, one could perhaps better compare the grassy area here to the grassy median in *Fogarty v Dept of Transportation*, 200 Mich App 572; 504 NW2d 710 (1993), where the Court concluded that the median was outside the improved portion of the highway designed for vehicular travel.